

1 HARDER STONEROCK LLP  
2 DILAN A. ESPER (CA Bar No. 178293)  
3 6300 Wilshire Blvd., Suite 640  
4 Los Angeles, California 90048  
5 Telephone: (424) 203-1600  
6 Facsimile: (424) 203-1601  
7 Email: [DEsper@HarderStonerock.com](mailto:DEsper@HarderStonerock.com)

8 *Attorneys for Nonparty*  
9 *Muddy Waters Capital LLC*

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11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 In re BANC OF CALIFORNIA  
14 SECURITIES LITIGATION

Case No. 8:17-cv-00118-DMG (DFMx)

15 CLASS ACTION

16 This Document Relates To:

17 ALL ACTIONS.

18 **RESPONSE OF THIRD PARTY**  
19 **MUDDY WATERS CAPITAL LLC**  
20 **TO DEFENDANT STEVEN A.**  
21 **SUGARMAN'S OBJECTION TO**  
22 **MUDDY WATERS' INTENTION TO**  
23 **DISCONTINUE SEEKING A**  
24 **MONETARY AWARD AGAINST**  
25 **LATHAM & WATKINS LLP**

26 Judge: Hon. Dolly M. Gee  
27 Courtroom: 8C  
28

1       **I.       INTRODUCTION**

2           Defendant Steven A. Sugarman’s filing regarding Third Party Muddy Waters  
3 Capital LLC’s (“Muddy Waters”) intention not to pursue a monetary sanctions award  
4 against Latham & Watkins LLP (“Latham”) is entirely inappropriate.

5           Muddy Waters has the right to seek remedies, or not seek remedies, against  
6 those who violated its rights as it sees fit. In this case, Sugarman and Latham both  
7 engaged in sanctionable conduct as set forth in Muddy Waters’ motion for contempt  
8 sanctions, and were both found in contempt by this Court. Latham then resolved its  
9 differences with Muddy Waters, leaving Muddy Waters to continue pursuing its  
10 claims against Sugarman alone.

11          This situation—where two different wrongdoers wronged a party—occurs all  
12 the time, and Sugarman’s attempt to paint this as some sort of act of disloyalty falls  
13 flat. Sugarman’s pose of moral and legal outrage seems comical given his own actions  
14 and the Court’s finding of contempt.

15       **II.       THE CONTEMPTS OF SUGARMAN AND LATHAM ARE NOT**  
16       **CONGRUENT.**

17          There is no basis for any of the relief that Sugarman seeks. First, while  
18 obviously Latham represented Sugarman at the time of the contumacious conduct<sup>1</sup>,  
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21           <sup>1</sup> Sugarman includes a bank shot argument that, because of some filings from  
22 2021 in which Latham may have adverted to continuing obligations to Sugarman, this  
23 means Latham is still representing him now in 2025. However, Sugarman could have  
24 easily filed a declaration averring a continued lawyer-client relationship if one  
25 existed, but did not do so. “If weaker and less satisfactory evidence is offered when it  
26 was within the power of the party to produce stronger and more satisfactory evidence,  
27 the evidence offered should be viewed with distrust.” *Carolina Power & Light Co. v*  
28 *Uranex*, 451 F.Supp. 1044, 1056 n. 4 (N.D. Cal. 1977) (citing Cal. Evid. Code § 412).  
In any event, Muddy Waters had a claim for contempt against Latham that was based  
on different allegations than its claim against Latham, and had every right to deal with  
Latham at arm’s length, whatever Latham’s current relationship with Sugarman might  
be.

1 Sugarman and Latham were found in contempt for different conduct and at different  
2 levels of culpability. The Court held that Latham violated the Court’s protective  
3 order by stamping the Lee Report “confidential” when it contained “attorneys’ eyes  
4 only” material, and then giving the report to Sugarman (who should not have received  
5 it because it should have been “attorneys’ eyes only”). Dkt. 654 at 9. Further, the  
6 Court rejected Muddy Waters’ argument that Latham acted in bad faith: “there is  
7 insufficient evidence to suggest that Latham acted in bad faith as opposed to in  
8 serious error.” *Id.* at 11. Thus, the Court found a single — to be clear, serious —  
9 violation of the Court’s protective order by Latham that was an error, but not one  
10 motivated by bad faith.

11 In contrast, the Court not only found that Sugarman deliberately and knowingly  
12 distributed and directed distribution of attorneys’ eyes only material to his then-  
13 employee, Adam Levine, and to the press (a **different** violation than Latham’s  
14 conduct), but also that Sugarman made false statements to this Court in opposition to  
15 Muddy Waters’ motion. *Id.* at 12–14. Thus, Sugarman’s contumacious conduct was  
16 both at a different, greater level of culpability **and** was different conduct than  
17 Latham’s.

18 Under California law, a settlement only reduces a different party’s liability  
19 when the two are “joint tortfeasors.” *FDIC v. Ching*, 189 F. Supp. 3d 978, 996 (E.D.  
20 Cal. 2016). Put another way, they must “be liable for the same tort.” Cal. Code Civ.  
21 Proc. § 877.

22 Sugarman and Latham are not joint tortfeasors. The Court’s contempt of court  
23 ruling (and any monetary sanctions it awards) are a sanction, not tort damages. *Ching*  
24 indicates that the obligations are separate: *Ching* involved a payment of \$4 million to  
25 a bank by its investors in a settlement to remedy a shortfall; the court held this  
26 payment did not reduce liability of the bank’s directors to the FDIC for banking law  
27 violations, because the directors’ obligation to pay administrative sanctions to the  
28 FDIC and the \$4 million payment to remedy the asset shortfall were not the

obligations of joint tortfeasors.

Here, Latham and Muddy Waters resolved their differences including for failing to stamp the Lee Report “attorney’s eyes only” and giving it to Sugarman; this in no way compensates Muddy Waters for the entirely separate contumacious acts of Sugarman in distributing the Lee Report to Levine and to the press.

Indeed, if the law were otherwise, it would seriously interfere with the Court’s ability to punish and deter contumacious conduct. A party’s decision to settle one party’s contempt of court could mean that another party, even one who engaged in far more egregious conduct, could escape punishment for contempt of court entirely. It would constitute a free pass for persons who not only wrong other parties to court proceedings, but commit grave wrongs against the court system itself, such as Sugarman did when he lied to the Court and falsely denied his conduct in this case. The result of such a rule would also likely be to deter settlements of contempt claims. Parties found to be in contempt of court, even jointly or in the same contempt order, simply should not be treated as joint tortfeasors, for both textual and policy reasons.<sup>2</sup>

### **III. THERE IS NOTHING UNETHICAL ABOUT LATHAM’S RESOLVING MUDDY WATERS’ CLAIMS AGAINST IT.**

As noted above, Latham no longer represents Sugarman. Sugarman’s brief

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<sup>2</sup> For the same reasons, Muddy Waters had no obligation to move for a hearing under Cal. Code Civ. Proc. 877.6, which by its express terms only applies either to “joint tortfeasors” or “co-obligors on a contract.” Sugarman and Latham are merely co-opposing parties in a contempt proceeding who have both been adjudged responsible for separate contempts. The statute by its terms does not apply.

Further, because there is no basis for a reduction in the amount Sugarman owes, there is also no justification for a discovery order here. And even if this Court believes any discovery is necessary, Muddy Waters would urge this Court to allow briefing on the narrow scope of such discovery before any such discovery is permitted, as a party such as Sugarman who has flouted confidentiality and lied to this Court should be strictly limited in any discovery he tries to obtain as well as with respect to whether he (rather than his lawyers) should ever see it.

1 throws around a lot of innuendo about ethical rules that bind Latham but, simply put,  
2 Sugarman identifies no rule that says that law firm cannot settle a contempt of court  
3 claim when there is also a claim against a former (or even current) client.

4 For instance, Sugarman uses the word “collusive” a lot, but does not identify  
5 any actual collusion. Surely settling a sanctions claim by itself is not “collusion.”  
6 Sugarman also intimates that Latham violated his lawyer-client privilege, but does not  
7 identify any actual violation of the privilege.

8 Sugarman refers to an apparent promise Latham made not to take on adverse  
9 representation to Sugarman, but of course, Latham is acting *in pro per* and is not  
10 representing anyone at all in resolving the contempt claim, let alone any party adverse  
11 to Sugarman.

12 Muddy Waters and its counsel take legal ethics obligations seriously.  
13 However, Sugarman makes no actual allegation of a legal ethics violation; he merely  
14 handwaves and throws theories out in the hope something will stick. He has not  
15 shown any ethical principle that would bar his former lawyers from resolving a claim  
16 against them.

17 **IV. MUDDY WATERS’ DECISION NOT TO PURSUE A MONETARY**  
18 **REMEDY AGAINST LATHAM DOES NOT MODIFY THIS**  
19 **COURT’S ORDER OR DEPRIVE IT OF JURISDICTION.**

20 Finally, Sugarman’s argument lashing out at Muddy Waters’ counsel and  
21 accusing Muddy Waters and its lawyers of “modify[ing]” a court order and  
22 “depriv[ing]” this Court of jurisdiction is wrong. Dkt. 670 at 2, 5.

23 This Court has full jurisdiction to act on the matters before it, and Muddy  
24 Waters has specifically **not** asked for this Court to modify its contempt order. *See*  
25 Dkt. 669 at 2 (asking that this Court “leave the September 30, 2024 order finding  
26 Latham and Sugarman in contempt in place in its entirety”). Muddy Waters has  
27 simply notified the Court that it is not seeking a money award against Latham. That  
28 truthful statement of what Muddy Waters is not asking this Court to do does not

1 purport to modify the Court's order or affect its jurisdiction. The Court's jurisdiction  
2 did not change at all following Muddy Waters' filing as opposed to what it was before  
3 it. The only thing that changed is the scope of Muddy Waters' request for relief.  
4 Further, Sugarman's statement that Muddy Waters does not have standing to tell the  
5 Court what relief it is and is not seeking is not supported by any authority and,  
6 frankly, makes no sense.

7 **V. CONCLUSION**

8 For the foregoing reasons, Muddy Waters requests that this Court reject  
9 Sugarman's unsupported requests and (1) leave the September 30, 2024 order finding  
10 Latham and Sugarman in contempt in place in its entirety, and (2) enter an order  
11 fixing the amount of monetary contempt sanctions against Sugarman consistent with  
12 Muddy Waters' prior filings.

13 Dated: July 8, 2025

HARDER STONEROCK LLP

14 By: /s/ Dilan A. Esper

15 DILAN A. ESPER

16 Attorneys for Nonparty

17 Muddy Waters Capital LLC  
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